

Girl raped off-campus by student sex offender can sue school district, court rules

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The 14-year-old left campus with a high-school student, who was also a registered sex offender, and was raped at his home.

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A 14-year-old girl who was raped by a high-school student — who was also a registered sex offender — can sue the school district for negligence and breach of duty for failing to protect her, the state Supreme Court ruled.

In a 5-4 split ruling published Thursday, the state's highest court determined that the question of whether the Bethel School District was negligent for failing to protect the younger student from the older sex offender should be heard by a jury.

According to the case presented to the court, the 14-year-old student was on the junior-high track team and 18-year-old Nicholas Clark was running varsity track for the high school. Both teams were sharing the district's track-and-field facilities when the two students met in April 2007.

According to the girl, Clark was acting as an unofficial coach and mentor to younger students.

Unbeknown to her or other adults at the practice, Clark had been convicted of indecent liberties for sexually assaulting another junior-high student in 2004 and was required to register as a Level 1 sex offender, according to the court case.

The Pierce County Sheriff's Office notified the high school's principal, but the principal did not inform other faculty and did not develop a safety plan that would have helped Clark avoid students two or more years younger than him as required, according to the suit.

The day after the two students met on the track field, the suit alleges, the 14-year-old girl skipped track practice and left with Clark believing they were going to a fast-food restaurant for a meal.

Instead, Clark took the girl to his house and raped her.

Clark was charged the following month with third-degree rape and ultimately pleaded guilty to second-degree assault, court records show.

The 14-year-old sued the school district, claiming negligence, but the suit was initially dismissed by a Pierce County Superior Court judge who said that because the student had left the custody of the school the direct link between the school's lack of action and her assault was not established.

That decision was reversed by the appeals court. The Supreme Court's decision affirms the appeals-court ruling and remands the case back to Superior Court.

In the majority opinion, Justice Steven C. González wrote that the school's failure to foresee the possibility that a sex offender would offend again did contribute to the girl's victimization even though she had willingly left campus with her attacker and was no longer on school grounds.

He wrote, "Washington courts have long recognized that school districts have 'an enhanced and solemn duty' of reasonable care to protect their students, which includes the duty to protect their students from the foreseeable risk of harm the students may inflict on each other."

He wrote that the school district was correct in arguing that schools have a duty to their students because the student is under the district's control and protection while on campus, but also said "it does not follow that the victim must be in the school's custody at the time of the injury for the duty to have existed."

Quoting a ruling by the Idaho Supreme Court, González noted "the relevant inquiry is to the location of the negligence rather than the location of the injury."

"Students have been skipping class since 'at least the days of Huck Finn and Tom Sawyer,' " he wrote, also quoting another case. "We cannot say as a matter of law that it is unforeseeable that students will leave campus together."

Also signing the majority decision were Justices Mary E. Fairhurst, Debra L. Stephens, Charles K. Wiggins and Mary I. Yu.

In the dissent, Chief Justice Barbara A. Madsen argued that the majority ruling expands the duty of school districts to protect students from harm inflicted when students are not on campus or in school custody.

"This expands the scope of a school district's duty further than our case law warrants and exposes school districts to liability for events over which they have no control," Madsen wrote. "Because I would hold that school districts do not owe a duty to protect students who are not in their custody from the criminal conduct of other students occurring off school premises, and because I would hold that even if a duty were

breached, it was not the proximate cause of (the damage to the 14-year-old), I respectfully dissent.”

In addition to Madsen, the dissent was signed by justices Charles W. Johnson, Susan Owens and Sheryl Gordon McCloud.

In the dissent, Madsen noted, too, that students — even registered sex offenders — have a legal right to privacy in their schools.

Correction: A previous version of this story misstated the location where the girl had been raped. She was raped at the offender’s home.

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